

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Matthew Alexander Nielson; J.Z., a Minor
under age 18 by his Parent and Guardian
Michele Stephens; D.M., a Minor under age 18
by her Parent and Guardian Victoria Reed; and
the Freedom From Religion Foundation, Inc.,

Plaintiffs,

v.

School District Five of Lexington and
Richland Counties,

Defendant.

C.A. No. 3:12-cv-01427-CMC

**DEFENDANT’S MOTION FOR
SUMMARY JUDGMENT**

Pursuant to Fed.R.Civ.P. 56(c), Defendant School District Five of Lexington and Richland Counties (hereinafter “the District”), by and through its undersigned counsel, hereby moves for summary judgment in its favor on the issue remaining for consideration by the Court as stipulated by the parties. That issue is whether the District’s Board of Trustees (hereinafter “the Board”) is a deliberative or legislative public body covered by the exemption to impermissible government sponsored prayer first articulated by the Supreme Court in *Marsh v. Chambers*, 463 U.S. 783, 103 S.Ct. 3330 (1983) and subsequently explained and affirmed by the Supreme Court’s decision in *Town of Greece, NY v. Galloway*, 134 S.Ct. 1811, 188 L.Ed.2d 835 (2014). If this Court determines that the *Marsh* and *Town of Greece* holdings do not apply to school board prayer, which the District expressly denies, the parties stipulate that the Court may resolve the remaining causes of action through application of the applicable Constitutional tests related to school prayer.

The grounds for the Motion are that there are no genuine issues of material fact, and the District is entitled to judgment as a matter of law, for the reason that the Board is a legislative or deliberative public body and thus a prayer or invocation at the opening of Board meetings does not violate the Establishment Clause. Moreover, there is not impermissible coercion.

In support of the Motion, the District relies upon an accompanying Memorandum of Law, as well as other materials contained within the parties' Joint Exhibit.

Respectfully Submitted:

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Columbia, SC